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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re G.S., et al., Persons Coming Under the Juvenile Court Law.	H038388, H038543 (Santa Clara County Super. Ct. Nos. JD21037, JD21038)
SANTA CLARA COUNTY DEPARTMENT OF FAMILY AND CHILDREN'S SERVICES, Plaintiff and Respondent, v. R.S., Defendant and Appellant.	

In contested proceedings in juvenile court, two minor siblings, R.S. and G.S., were declared dependent children of the court under Welfare and Institutions Code section 300,[1] and reunification services were ordered for their parents. R.S., the father of the minors, appeals from a dispositional order and a subsequent interim order, contending that the Department of Family and Children's Services (Department) made inadequate inquiries regarding the minors' Indian ancestry, and thus insufficient notice was provided

[1] All further statutory references are to the Welfare and Institutions Code except as otherwise indicated.

under the Indian Child Welfare Act, 25 United States Code section 1901 et seq. (ICWA or the Act). We find sufficient compliance with the Act, however, and therefore must affirm the orders.

Background

The subjects of this appeal are appellant's children, R.S. and G.S., who were removed from their home in early 2012 when R.S. was seven years old and G.S. was 10. In petitions filed under section 300, the social worker alleged that the minors had been exposed to ongoing domestic violence perpetrated on their mother by appellant, who also verbally abused both children and used corporal punishment to discipline them. R.S. had begun mimicking appellant's violent behavior at school, and G.S. had been displaying excessive timidity for her age and was performing below her ability. In 2008, following four separate CPS referrals between 2001 and 2003, appellant's daughter from a prior relationship, A.S., had been removed from parental custody because of physical abuse by appellant and ongoing domestic violence in the home. In addition, appellant had an extensive record of arrests and convictions, primarily involving domestic violence and cruelty to a child.

Upon the removal of G.S. and R.S., the social worker made an initial inquiry regarding the possible Indian status of both parents. Their mother completed form ICWA-020 disclaiming any knowledge of Indian ancestry. Appellant, however, told the social worker that he had Cherokee ancestry on his father's side. At the initial hearing on February 8, 2012, the court found that ICWA might apply, declared appellant to be the presumed father, and ordered the social worker to give the required notice under the Act. Accordingly, DFCS sent notice to all three federally recognized Cherokee tribes. Appellant completed form ICWA-020 on March 14, 2012, indicating that he "may have Indian ancestry" in the Cherokee Nation.

In a combined jurisdictional and dispositional report on February 29, 2012, the social worker recommended sustaining the petitions with family reunification services to

both parents. The minors had been placed with the paternal grandmother and her husband pending the dispositional hearing. In mid-March the social worker had submitted an addendum, reporting that she had received responses from two Cherokee tribes and the Bureau of Indian Affairs (BIA). The United Keetoowah Band of Cherokee Indians reported no evidence that the minors were descendants from anyone in the Keetoowah Roll. The Cherokee Nation likewise had been unable to trace their lineage to anyone in their tribal records. The third tribe, the Eastern Band of Cherokee Indians, submitted a similar letter for each child in April 2012 stating that the child was not registered or eligible to register as a member of that tribe.

At the jurisdictional hearing on April 30, 2012, the juvenile court sustained the petitions as amended, ordered the removal of the minors, and directed DFCS to provide reunification services to both parents. An interim review hearing was set for June 4, 2012 and a six-month review hearing for October 22, 2012. At the interim hearing the court continued the matter to July 9 for "further receipt" of the results of a previously ordered domestic violence assessment, and for "further update on the case." The July 9, 2012 hearing resulted in an order, over appellant's objection, that he participate in a 52-week batterer's program as well as individual therapy, a Men Overcoming Aggressive Behavior Program, and a Parenting Without Violence class. The children's mother was also ordered to undergo therapy along with a Conflict & Accountability Program.

Appellant filed a notice of appeal from both the April 30, 2012 disposition and the July 9 order regarding domestic violence remediation.

Discussion

The only issue raised in this appeal is the adequacy of the inquiry into the minors' heritage, as required by ICWA. Appellant specifically contends that the Department violated its statutory duty by failing to obtain sufficient information on the minors' paternal great-grandparents, except for the name of the paternal great-grandfather. We find no violation.

Under ICWA, if a state court knows or has "reason to know" that a child involved in a dependency proceeding may be an Indian child, the child's tribe must be notified of the proceeding and its right to intervene. (25 U.S.C., § 1912, subd. (a).)[2] California implements the inquiry provisions of the Act by requiring "further inquiry" regarding the child's family history and notice to tribes in which the child is or could be a member. (§ 224.3, subd. (c).) "If the court, social worker, or probation officer knows or has reason to know that an Indian child is involved, the social worker or probation officer is required to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members to gather the information required in paragraph (5) of subdivision (a) of Section 224.2, contacting the Bureau of Indian Affairs and the State Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member or eligible for membership in and contacting the tribes and any other person that reasonably can be expected to have information regarding the child's membership status or eligibility." (§ 224.3, subd. (c).) Reinforcing that mandate, subdivision (d) of section 224.3 provides: "If the court, social worker, or probation officer knows or has reason to know that an Indian child is involved, the social worker or probation officer shall provide notice in accordance with paragraph (5) of subdivision (a) of Section 224.2." And section 224.2 requires notice to be sent to the minor's parents and the affected tribe whenever "it is known or there is reason to know that an Indian child is involved [in a Indian child custody proceeding], and for every hearing thereafter . . .

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[2] The Act states, "In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention." (25 U.S.C., § 1912(a).)

unless it is determined that [ICWA] does not apply to the case in accordance with Section 224.3." (§ 224.2, subds. (a), (b).)

"The notice must include the names of the child's ancestors and other identifying information, if known, and be sent registered mail, return receipt requested." (*In re Brooke C.* (2005) 127 Cal.App.4th 377, 384.) The particular family information required in the notice is set forth in section 224.2, subdivision (a)(5): "(A) The name, birthdate, and birthplace of the Indian child, if known. [¶] (B) The name of the Indian tribe in which the child is a member or may be eligible for membership, if known. [¶] (C) All names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known."

"The requisite notice to the tribe serves a twofold purpose: (1) it enables the tribe to investigate and determine whether the minor is an Indian child; and (2) it advises the tribe of the pending proceedings and its right to intervene or assume tribal jurisdiction." (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 470.) The burden is on the Department to obtain "all possible information about the minor's potential Indian background and provide that information to the relevant tribe or, if the tribe is unknown, to the BIA." (*In re Louis S.* (2004) 117 Cal.App.4th 622, 630.)

The failure to comply with the notice requirements of ICWA may constitute prejudicial error unless the tribe has participated in or indicated no interest in the proceedings. (*In re Samuel P.* (2002) 99 Cal.App.4th 1259, 1265.) On the other hand, "[i]f proper and adequate notice has been provided pursuant to Section 224.2, and neither a tribe nor the Bureau of Indian Affairs has provided a determinative response within 60 days after receiving that notice, the court may determine that the [ICWA] does not apply to the proceedings, provided that the court shall reverse its determination of the inapplicability of the [ICWA] and apply the act prospectively if a tribe or the Bureau of

Indian Affairs subsequently confirms that the child is an Indian child." (§ 224.3, subd. (e)(3).)

In this case the record discloses an effort by the Department to determine whether the minors had Indian ancestry. Based upon appellant's representation that he "may have" a familial connection to the Cherokee Nation, the court directed the social worker to provide notice under ICWA, and she did so. The social worker sent notification form ICWA-030 to the three Cherokee tribes as well as the BIA and the Secretary of the Interior. She listed the paternal grandfather by name, provided his birthplace and date of birth, and named his tribe as "Cherokee." The paternal great-grandfather was named as well, but the social worker wrote "No information available" for his address, name of tribe, or date and place of birth.

Appellant maintains that the social worker was derelict in her duty to obtain sufficient information to enable the tribes to ascertain the minors' Indian heritage. In appellant's view, she should have sought more details from the paternal grandmother, who was the caretaker of the children "and had been married to the paternal grandfather for a number of years, presumably gaining some knowledge of his parents."

We find no error on the record before us. In completing form ICWA-020 on March 14, 2012, appellant did not affirmatively state that he had a lineal ancestor who was or had been a member of a federally recognized tribe; he only checked the box indicating that he "may have" Indian ancestry through the Cherokee nation. (CT 188)~ On appeal he does not suggest that he or another family member provided any additional information that the social worker failed to report to the tribes or the BIA in her notification. Nor does he suggest that there is more to be had. Instead, he simply faults the social worker for not obtaining more details from his own mother regarding the family history of her ex-husband— without identifying the specific facts that the social worker should have discovered. Neither the court nor the Department is required to conduct a comprehensive independent investigation into the minors' Indian status or to

"cast about" for further information to give to the tribes or the BIA. (*In re Levi U.* (2000) 78 Cal.App.4th 191, 199; *In re C.Y.* (2012) 208 Cal.App.4th 34, 39.)

Absent some indication on the record that there was information that the Department and the court ignored in ascertaining membership eligibility of the minors, appellant has failed to overcome the basic presumption that "official duty has been regularly performed." (Evid. Code, § 664.) "Ordinarily, when a social worker's report or other documentation indicates that ICWA *notice* has been provided, it can properly be presumed that such notice was in compliance with the requirements of the ICWA." (*In re Jeffrey A.* (2002) 103 Cal.App.4th 1103, 1108; see also *In re S.B.* (2009) 174 Cal.App.4th 808, 812-813 [applying presumption that proper notice was given to tribes]; *In re L.B.* (2003) 110 Cal.App.4th 1420, 1425 [presuming that notice complied with ICWA "in the absence of any evidence in the record to the contrary or any challenge to this representation in juvenile court"].)

Here the social worker notified the three Cherokee tribes, including the tribe identified by appellant. She complied with subdivision (c) of section 224.3 and subdivision (a)(5)(C) of section 224.2, which required her to include all "identifying information, if known," relating to the ancestors of the affected child. Given the paternal grandfather's name, birth date, city and state of his residence, and the paternal great-grandfather's name, the notified tribes reported that the minors were not eligible for membership, and each declined to intervene. Having received a response from each of the three federally recognized tribes stating that the minors did not appear to be descendants of anyone in that tribe, the Department and the court properly concluded that ICWA did not apply. The Department has acknowledged its continuing statutory duty to provide notice to the tribes should it receive additional pertinent information on this

issue.[3] (§ 224.3, subd. (f); Cal. Rules of Court, rule 5.481.) Based on the evidence before it at the time of the proceedings, however,[4] the juvenile court did not err in determining that R.S. and G.S. fell outside the purview of ICWA.

Disposition

The orders are affirmed.

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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PREMO, J.

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[3] In its respondent's brief, the Department represented that it "intends to re-send ICWA notice in this case to be sure that all available information is supplied to the tribes."

[4] The Department has offered a declaration from the social worker attesting to her further efforts since the filing of appellant's notices of appeal. She stated that since the original inquiry to and response from the three tribes, she had found additional information from the file of the minors' half-sister, A.S. Nothing in that file indicated that A.S. was an Indian child; but she was, "in an abundance of caution," re-sending notice to the tribes with the additional information. The Department also submitted the social worker's February 29, 2012 service log, which reflects a telephone call to the paternal grandmother. In that conversation the social worker asked about the paternal grandfather's background. The paternal grandmother told the social worker that she had "not talked to him for many years. She told [the social worker] that he was born in Arizona Pheonix [*sic*] and was born in 1948. She has not [*sic*] telephone number or contact info for him but she was told that he has Cherokee ancestry. [S]he provided the same inform[a]tion as [her] son [appellant]." The Department asks this court to consider these two items, citing Code of Civil Procedure section 909. We decline to do so.